



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA ELECTRIC AND POWER COMPANY FOR THE
VIRGINIA CITY HYBRID ENERGY CENTER**

Registration No. 11526

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309 and - 1316, between the State Air Pollution Control Board and Virginia Electric and Power Company, regarding Virginia City Hybrid Energy Center, for the purpose of resolving certain alleged violations of the Virginia Air Pollution Control Law and the applicable permits and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
2. “CFB” means circulating fluidized bed.
3. “CFR” means the Code of Federal Regulations, as incorporated into the Regulations.
4. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the Virginia City Hybrid Energy Center located at 3425 Russell Creek Road, in Wise County, Virginia.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
9. "PCE" means a partial compliance evaluation by DEQ staff.
10. "PSD Permit" means a Prevention of Significant Deterioration (PSD) Permit to modify and operate an electric power generating facility issued to Virginia Electric and Power Company approved on May 2, 2014.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution", means 9 VAC 5 chapters 10 through 80.
12. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
13. "Title V Permit" means the Article 3 Federal Operating Permit to modify and operate an electric power generating facility issued to Virginia Electric and Power Company effective January 1, 2014 (modified June 1, 2015, significantly modified September 30, 2015, administrative amendments December 3, 2015 and June 9, 2016).
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
17. "Virginia City Hybrid Energy Center" or "VCHEC" means Virginia City Hybrid Energy Center, owned by Virginia Electric and Power Company, a company authorized to do business in Virginia and its affiliates, partners and subsidiaries. Virginia Electric and Power Company is a "person" within the meaning of Va. Code § 10.1 – 1300.

SECTION C: Findings of Facts and Conclusions of Law

1. Virginia Electric and Power Company owns and operates the Facility in Wise County, Virginia. The Facility is the subject of the Title V and PSD Permits which allow the company to operate the electric power generating facility. The Facility is also subject to

40 CFR Part 60, Subpart Da – Standards of Performance for Electric Utility Steam Generating Units (Subpart Da).

2. On June 16, 2020, DEQ received telephone correspondence from Virginia Electric & Power Company regarding notification of exceedance of the Subpart Da limit for NO_x 30-day rolling average lb/MWh for Unit CFB2 from April 17, 2020 to April 20, 2020. The Subpart Da limit is 1.0 lb/MWh.
3. On June 29, 2020, DEQ received the 14 day follow-up letter regarding the exceedance of the Subpart Da limit for NO_x 30-day rolling average lb/MWh for Unit CFB2 from April 17, 2020 to April 20, 2020.
4. On August 3, 2020, DEQ staff conducted a PCE for review of the excess emission report submitted July 30, 2020. Review of the submitted report demonstrated the exceedance of the Subpart Da limit for NO_x 30-day rolling average lb/MWh for Unit CFB2 was 1.1 lb/MWh from April 17, 2020 to April 20, 2020. The Facility returned to compliance with the Subpart Da limit for NO_x 30-day rolling average lb/MWh for Unit CFB2 on April 21, 2020.
5. Condition No. 87 of the Title V Permit and Condition No. 28 of the PSD Permit require operation in compliance with the requirements of 40 CFR 60, Subpart Da.
6. 9 VAC 5-80-490 B. states: “B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards...2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based...”
7. 9 VAC 5-80-1705 A. states: “A major stationary source or major modification shall meet each applicable emissions limitation under the implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61 and 63.”
8. 9 VAC 5-50-410 Designated Standards of Performance states: “Subpart Da - Electric Utility Steam Generating Units. 40 CFR 60.40Da through 40 CFR 60.52Da (electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel), and for which construction, reconstruction, or modification is commenced after September 18, 1978).”
9. 40 CFR 60.44 Da(e) states: “Except as provided in paragraphs (f) and (h) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, modification after February 28, 2005 but before May 4, 2011, shall

cause to be discharged into the atmosphere from that affected facility any gases that contain NOX (expressed as NO₂) in excess of the applicable emissions limit specified in paragraphs (e)(1) through (3) of this section as determined on a 30-boiler operating day rolling average basis.

(1) For an affected facility which commenced construction, any gases that contain NOX in excess of 130 ng/J (1.0 lb/MWh) gross energy output.”

10. On August 10, 2020, based on the results of the August 3, 2020 PCE, the Department issued a Notice of Violation No. ASWRO001585 to Virginia Electric and Power Company for the alleged violations described in paragraph C(4), above.
11. On August 13, 2020, the Department spoke with Virginia Electric and Power Company via teleconference regarding the August 10, 2020 NOV.
12. Based on the results of the August 3, 2020 PCE and the August 13, 2020 teleconference, the Board concludes that Virginia Electric and Power Company has violated Condition 87 of the Title V Permit, Condition 28 of the PSD Permit, 40 CFR 60.44 Da(e)(1), 9 VAC 5-80-490B, 9 VAC 5-80-1705A, and 9 VAC 5-50-410 as described in paragraphs C(4) through C(9), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and - 1316, the Board orders Virginia Electric and Power Company and Virginia Electric and Power Company agrees to:

Pay a civil charge of \$13,582 within 30 days of the effective date of the Order in settlement of the violation cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Virginia Electric and Power Company shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Virginia Electric and Power Company shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Virginia Electric and Power Company for good cause shown by Virginia Electric and Power Company, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order and NOV No.ASWRO001585 dated August 10, 2020. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia Electric and Power Company admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Virginia Electric and Power Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia Electric and Power Company declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia Electric and Power Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia Electric and Power Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia Electric and Power Company shall demonstrate that such circumstances

were beyond its control and not due to a lack of good faith or diligence on its part. Virginia Electric and Power Company shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which the parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

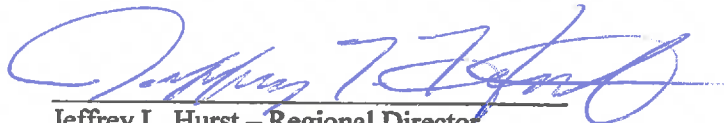
9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Virginia Electric and Power Company. Nevertheless, Virginia Electric and Power Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Virginia Electric and Power Company has completed all of the requirements of the Order.
 - b. Virginia Electric and Power Company petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia Electric and Power Company.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Virginia Electric and Power Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or

requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia Electric and Power Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Virginia Electric and Power Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia Electric and Power Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia Electric and Power Company.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

And it is ORDERED this 26th day of October, 2020


Jeffrey L. Hurst – Regional Director
Department of Environmental Quality

Virginia Electric and Power Company voluntarily agrees to the issuance of this Order.

Date: 10/22/2020

By: Amanda Tornabene

Amanda B. Tornabene, Vice President - Environmental Services
Virginia Electric and Power Company

Commonwealth of Virginia

(City)/County of Richmond

The foregoing document was signed and acknowledged before me this 22nd day of
October, 2020 by Amanda B. Tornabene who is
Vice President of Virginia Electric and Power Company, on
behalf of the corporation.

Angela B. Fitzgerald
Notary Public

7022016
Registration No.

My commission expires: 3-31-2022

Notary Seal:

